

BORA LASKIN LAW LIBRARY



3 1761 04867 5623

INTELLECTUAL PROPERTY : COPYRIGHT AND TRADEMARKS (298HS)

1999/2000

VOLUME 1 : COPYRIGHT

**Abraham Drassinower*
Faculty of Law
University of Toronto**

***With the assistance of Matthew Horner**

**These materials are solely for the classroom use of students in the Faculty of Law,
University of Toronto**

BORA LASKIN LAW LIBRARY

DEC - 2 1989

FACULTY OF LAW

UNIVERSITY OF TORONTO

**INTELLECTUAL PROPERTY :
COPYRIGHT AND TRADEMARKS (298HS)**


1999/2000

VOLUME 1 : COPYRIGHT

**Abraham Drassinower*
Faculty of Law
University of Toronto**

***With the assistance of Matthew Horner**

**These materials are solely for the classroom use of students in the Faculty of Law,
University of Toronto**



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

Volume 1: Copyright

Table of Contents

I. Introduction

H. Fox, "The Definition and Nature of Copyright," in H. Fox, ed., <i>The Canadian Law of Copyright and Industrial Designs</i> , 2nd ed. (Toronto: Carswell, 1967).....	1-1
<i>Donaldson v. Beckett</i> (1774), 1 E.R. 837.....	1-5
<i>Compo Co. Ltd. v. Blue Crest Music Inc.</i> (1979), 105 D.L.R. (3d) 249 (S.C.C.).....	1-12
<i>Bishop v. Stevens</i> (1990), 72 D.L.R. (4 th) 97 (S.C.C.).....	1-12
<i>Victoria Park Racing and Recreation Grounds Ltd. v. Taylor</i> (1937), 58 C.L.R. 479 (Aust.H.C.).....	1-13
John Locke, <i>Second Treatise of Government</i> , Chapter V (Indianapolis: Hackett, 1980).....	1-38

II. Prerequisites for Copyright

A. Originality

<i>University of London Press Ltd. v. University Tutorial Press Ltd.</i> , [1916] 2 Ch. 601.....	2-1
<i>Kilvington Brothers Ltd. v. Goldberg</i> (1957), 8 D.L.R. (2d) 768 (Ont. H.C.).....	2-9
<i>G.A. Cramp & Sons Ltd. v. Frank Smythson Ltd.</i> , [1944] 2 All E.R. 92 (H.L.).....	2-12
<i>Caron v. Association des Pompiers de Montreal Inc.</i> (1992), 42 C.P.R. (3d) 292 (F.C.T.D.)...2-16	
<i>Walter v. Lane</i> , [1900] A.C. 539 (H.L.).....	2-20
<i>Hearn v. Meyer</i> , 664 F.Supp. 832 (S.D.N.Y. 1987).....	2-33
<i>U & R Tax Services Ltd. v. H & R Block Canada Inc.</i> (1995), 62 C.P.R. (3d) 257 (F.C.T.D.)..2-44	
<i>Tele-Direct (Publications) Inc. v. American Business Information Inc.</i> (1997), 76 C.P.R. (3d) 296 (F.C.A.).....	2-54

B. Idea/Expression Dichotomy

<i>Nichols v. Universal Pictures Corporation</i> , 45 F.(2d) 119 (2 nd Cir. 1930).....	2-63
<i>Moreau v. St. Vincent</i> , [1950] 3 D.L.R. 713 (Ex.Ct.).....	2-66
<i>Deeks v. Wells</i> , [1931] O.R. 818 (C.A.).....	2-71
<i>Hollinrake v. Truswell</i> , [1894] 3 Ch. 420 (C.A.).....	2-87
<i>Cuisenaire v. South West Imports Ltd.</i> (1968), C.P.R. 76 (S.C.C.).....	2-92
<i>Bulman Group Ltd. v. 'One-Write' Systems Ltd.</i> (1982), 62 C.P.R. (2d) 149 (F.C.T.D.).....	2-95
<i>Baker v. Selden</i> , 101 U.S. 99 (1879).....	2-100

C. Merger

<i>Morrissey v. Procter & Gamble Company</i> , 379 F.2d 675 (1 st Cir.1967).....	2-105
<i>Herbert Rosenthal Jewelry Corp. v. Kalpakian</i> , 446 F.2d 738 (9 th Cir.1971).....	2-108
<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (reprinted below at p.3-65; read pp. 198-205 of Trial Court judgment as well as Supreme Court judgment)	
<i>Les Promotions Atlantiques v. Hardcraft Industries</i> (1987), 17 C.P.R. (3d) 552 (F.C.T.D.)...2-111	

D. Fixation

<i>Canadian Admiral Corporation Ltd. v. Rediffusion Inc.</i> , [1954] Ex. C.R. 384.....	2-113
<i>Mai Systems Corp. v. Peak Computer Inc.</i> , 991 F.2d 511 (9 th Cir. 1993).....	2-128
<i>Gould Estate v. Stoddart Publishing Co.</i> (1996), 30 O.R. (3d) 520 (Gen.Div.).....	2-136

III. Subject Matter

A. Literary Works

(i) Definition

<i>Hollinrake v. Truswell</i> (reprinted above at p.2-87)	
<i>Exxon Corporation v. Exxon Insurance Ltd.</i> , [1982] 1 Ch. 119 (C.A.).....	3-1

(ii) Compilations

<i>Macmillan and Co., Ltd. v. Cooper</i> (1923), 40 Times Law Reports 186 (C.A.).....	3-15
<i>Ladbroke (Football) Ltd. v. William Hill (Football) Ltd.</i> , [1964] 1 All E.R. 465 (H.L.).....	3-21
<i>Slumber-Magic Adjustable Bed Co. Ltd. v. Sleep-King Adjustable Bed Co. Ltd.</i> (1984), 3 C.P.R. (3d) 81 (B.C.S.C.).....	3-30

(iii) Facts and Information

<i>Kelly v. Morris</i> (1866), 35 L.J. Ch. 423.....	3-36
<i>Scott v. Stanford</i> (1867), 36 L.J. Ch. 729.....	3-38
<i>British Columbia Jockey Club v. Standen</i> (1985), 8 C.P.R. (3d) 283 (B.C.C.A.).....	3-41
<i>Elanco Products Ltd. v. Mandops (Agrochemical Specialists) Ltd.</i> , [1979] F.S.R. 46 (C.A.).....	3-45
<i>Feist Publications Inc. v. Rural Telephone Service Co.</i> , 499 U.S. 340 (1990).....	3-52

(iv) Computer Programs

<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (1986), 28 D.L.R. (4 th) 178 (F.C.T.D.)....	3-65
<i>Apple Computer Inc. v. Mackintosh Computers Ltd.</i> (1990), 71 D.L.R. (4 th) 95 (S.C.C.).....	3-92
<i>Nintendo of America Inc. v. Camerica Corp.</i> (1991), 34 C.P.R. (3d) 193 (F.C.T.D.).....	3-95

B. Artistic Works

<i>Cuisenaire v. South West Imports Ltd.</i> (reprinted above at p.2-92)	
<i>DRG Inc. v. Datafile Ltd.</i> (1987), 18 C.P.R. (3d) 538 (F.C.T.D.).....	3-103

C. Dramatic Works

<i>Kantel v. Grant</i> , [1933] Ex. C.R. 84.....	3-112
--	-------

IV. Ownership

<i>Donoghue v. Allied Newspapers Ltd.</i> , [1938] 1 Ch. 106.....	4-1
---	-----

Kantel v. Grant (reprinted above at p.3-112)
Gould Estate v. Stoddart Publishing Co. (reprinted above at p.2-136)

V. Infringement

A. Establishing Infringement

Francis Day & Hunter v. Bron, [1963] 1 Ch. 587 (C.A.).....5-1
Boutin v. Bilodeau (1992), 46 C.P.R. (3d) 395 (Que.C.A.).....5-23
Boutin v. Bilodeau (1994), 54 C.P.R. (3d) 160 (S.C.C.).....5-26

B. Substantial Part: Literal and Non-literal Copying

Hawkes and Son (London) Ltd. v. Paramount Film Service Ltd., [1934] 1 Ch. 593 (C.A.).....5-27
Ladbroke v. William Hill (reprinted above at p.3-21).
King Features Syndicate Inc. v. O. and M. Kleeman Ltd., [1941] A.C. 417 (H.L.).....5-36
Preston v. 20th Century Fox Canada Ltd. (1990), 33 C.P.R. (3d) 242 (F.C.T.D.).....5-55
Sid & Marty Krofft Television v. McDonald's Corp., 562 F.2d 1157 (9th Cir. 1977).....5-74
Computer Associates International Inc. v. Altai Inc., 982 F.2d 693 (2nd Cir. 1992).....5-87
Lotus Development Corp. v. Borland International Inc., 49 F.3d 807 (1st Cir. 1995).....5-102

C. Subconscious Copying

Gondos v. Hardy (1982), 64 C.P.R. (2d) 145 (Ont.H.C.).....5-111
Drynan v. Rostad (1994), 59 C.P.R. (3d) 8 (Ont.Gen.Div.).....5-124

VI. Defences

A. Fair Dealing & Public Interest

Hawkes and Son v. Paramount Film Service (reprinted above at p.5-27).
Hubbard v. Vosper, [1972] 2 Q.B. 84 (C.A.).....6-1
Beloff v. Pressdram Ltd., [1973] 1 All E. R. 241 (Ch.).....6-10
The Queen v. James Lorimer (1984), 77 C.P.R. (2d) 262 (F.C.A.).....6-27
Allen v. Toronto Star Newspapers Ltd. (1997), 78 C.P.R. (3d) 115 (Ont.Gen.Div.).....6-34

B. Fair Use

Sony Corporation of America v. Universal City Studios, 464 U.S. 417 (1984).....6-40
Princeton University Press v. Michigan Document Services, 99 F.3d 1381 (6th Cir. 1996).....6-84

C. Parody

Campbell v. Acuff-Rose Music Inc., 510 U.S. 569 (1994).....6-101

<i>Cie Generale des Etablissements Michelin v. C.A.W.-Canada</i> (1996), 71 C.P.R. (3d) 348 (F.C.T.D.).....	6-118
---	-------

VII. Moral Rights

<i>Snow v. The Eaton Centre Ltd.</i> (1982), 70 C.P.R. (2d) 105 (Ont. H.C.).....	7-1
--	-----

VIII. Remedies

<i>The Queen v. Lorimer</i> (reprinted above at p.6-27)	
<i>Regina v. Laurier Office Mart Inc.</i> (1995), 63 C.P.R. (3d) 229 (Ont.Gen.Div.).....	8-1